

DEVIN DERHAM-BURK #104353
CHAPTER 13 STANDING TRUSTEE
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Trustee for Debtor(s)

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA - DIVISION 5

In re:

SABANKAYA, SULEYMAN

SABANKAYA, RENEE

Debtor(s)

)
)
) Chapter 13
) Case No. 11-52520 SLJ
)
)

) TRUSTEE'S OBJECTION TO
) CONFIRMATION WITH CERTIFICATE OF
) SERVICE
)

) 341 Meeting Date: April 28, 2011 11:30 am
) Pre-Hearing Conference Date: June 23, 2011
) Pre-Hearing Conference Time: 9:30 a.m.
) Place: 280 S. 1st Street
) San Jose, CA Room 3099
) Judge: Stephen L. Johnson

Devin Derham-Burk, Trustee in the above matter, objects to the Confirmation of this 10% Plan for the following reasons:

1. The debtors have failed to comply with Fed. R. Bankr. P. 3015 and 11 U.S.C. §1325(a)(1) in that the Chapter 13 Plan was not filed with the Petition. Since the plan was not filed in time to be served with the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines, the debtors must serve all creditors with the Chapter 13 Plan, along with the **applicable** "Notice to Creditors Regarding Plan Provisions," and the "Order Establishing Procedures for Objection to Confirmation."

- 1 2. The Trustee objects to feasibility of the proposed plan pursuant to 11 U.S.C. 1325(a)(6)
2 for the following reason: The proposed plan does not provide for arrears and/or on-going
3 payments to junior lienholders on real property because a motion or adversary to
4 eliminate the lien will be filed. This proposal does not demonstrate how the debtors will
5 be able to pay the amounts due to junior lienholders in the event the debtors are not
6 successful in eliminating the lien.
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8 3. The Plan is in violation of 11 U.S.C. §1322(d) as the term exceeds 60 months. As
9 proposed, the term is approximately 135 months.
10
11 4. The Trustee questions the feasibility of the Plan pursuant to 11 U.S.C. §1325(a)(6).
12 Pursuant to Schedule J, there is a deficit in the debtors' budget of \$94.61 prior to the
13 debtors' plan payments of \$759.
14
15 5. The Trustee is unable to determine if the plan is in compliance with 11 U.S.C.
16 §1325(a)(5). The debtors have listed "AMS Servicing, LLC" as a secured creditor in
17 Sections 2(b) and 4 of the plan; however, they have failed to provide for said creditor on
18 Schedule D.
19
20 6. The Trustee is unable to determine if the Plan is in compliance with 11 U.S.C.
21 §1325(a)(5). The debtors have listed "Bank of New York Mellon" as a secured creditor
22 on Schedule D but have failed to include this creditor in their Chapter 13 Plan. The
23 debtors file an Amended Plan to provide for this creditor on the plan and must serve the
24 Amended Plan on the affected creditor.

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1 7. The Trustee is unable to determine whether all of the debtors' projected disposable
2 income is being applied to make payments to unsecured creditors under the plan as
3 required by 11 U.S.C. §1325(b)(1)(B). The debtors are above the median income;
4 therefore, the commitment period is 60 months. Pursuant to the Statement of Current
5 Monthly Income, there is monthly disposable income of \$607.97. Therefore, general
6 unsecured creditors must receive at least \$30,051.60. The debtors' proposed plan would
7 result in general unsecured creditors receiving 10%, or approximately \$8,000. The
8 following deductions claimed on the Statement of Current Monthly Income are either
9 inaccurate, not allowed by case law or are unsupported by Schedules I or J:

- 10 a. Line 30: The debtors are attempting to deduct \$1,400 for taxes; however, this
11 amount is not supported by the debtors' schedules.
- 12 b. Line 37: The debtors are attempting to deduct \$225 for telecommunication
13 services; however, this amount is for the debtors' telephone expense, which is
14 specifically excluded from Line 37.
- 15 c. Line 47: The debtors are attempting to deduct \$2,368.61 for their average monthly
16 mortgage payments; however, only \$2,358.61 is supported by the debtors'
17 schedules.

18 Note: See point #8 below.

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20 8. The debtors' proposed Chapter 13 Plan is in violation of 11 U.S.C. §1325(a)(4).
21 According to the debtor's schedules, there is excess equity in the debtor's personal
22 property in the amount of \$6,340.20. The debtors must amend the plan to state that,
23 notwithstanding Section 2(d), general unsecured creditors shall receive no less than
24 \$6,340.20. Note: see point #7 above.

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1 9. Pursuant to 11 U.S.C. §521(a)(1)(B)(iv), the debtors have failed to provide the Trustee
2 with copies of their pay advices for the 60 days preceding the filing of the petition. If the
3 debtors cannot provide said pay advices, a declaration signed by the debtors under
4 penalty of perjury must be provided explaining why said pay advices are not available.
5

6 10. The debtors have failed to comply with 11 U.S.C. §521(e)(2)(A)(i) and (B), in that they
7 have not provided the Trustee with a copy of their most recently filed Federal income tax
8 return.
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10 Dated: April 27, 2011

/S/ Devin Derham-Burk

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13 Chapter 13 Trustee
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Said envelopes were addressed as follows:

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